

REMARKS

Applicants submit that the amendments made herein are fully supported in the present specification as filed and add no new matter. Also, it is respectfully requested that the present Amendment be entered into the Official File in view of the fact that the Amendment automatically places the application in condition for allowance. This is because four claims remain rejected, but the rejected, independent claim has been amended in a fashion that puts this claim and its dependent claims into condition for allowance (explained in more detail below). Thus, the present Amendment is believed to be in proper form for placing the application in condition for allowance.

In the alternative, if the Examiner continues with the rejections of the present application, it is respectfully requested that the present Amendment be entered for purposes of an Appeal. The Amendment reduces the issues on appeal by reducing the number of claims (e.g., claim 27 has been canceled herein) and/or overcoming one or more of the rejections under 35 U.S.C. § 103(a). Thus, the issues on appeal would be reduced.

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims.

Status of the Claims

In the present Reply, claims 20 and 26 have been amended. Also, claim 27 has been canceled without prejudice or disclaimer of the subject matter contained therein. Further, claims 1-16, 18-19 and 21 were previously canceled. In addition, claims 17, 22, 23 and 26 are allowed. Thus, claims 17, 20 and 22-26 are pending in the present application.

No new matter has been added by way of these amendments. The amendment to claim 20 places this claim into allowable form. Applicants note that the scope of claim 20 as presented herein was previously considered by the Examiner (see this claim as presented in the previous Appeal Brief and subsequent Office Action of April 6, 2005 at page 6). The amendment to claim 26 is clearly clarifying in nature and is not considered a narrowing amendment. By amending the term “administrating” to “administering” in order to clarify the claimed invention, Applicants are in no way conceding any limitations with respect to the interpretation of the claims under the Doctrine of Equivalents.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues Under 35 U.S.C. § 103(a)

Claims 20, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rucker (“Mint oil reduces headaches,” XP001157330 & Pharmazeutische Zeitung, Vol. 141, No. 22, page 42 (Abstract) (1996)) in view of Hipkind ‘760 (U.S. Patent 5,792,760) (new rejection; as cited in paragraph 1), pages 2-3 of the Office Action). Also, claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rucker in view of Hipkind ‘760, the combination being taken further in view of Deans et al. ‘370 (U.S. Patent No. 5,858,370). Applicants respectfully traverse, and reconsideration and withdrawal of this rejection are respectfully requested.

With regard to claims 20, 24 and 25 and the rejection of combining Rucker and Hipkind '760, Applicants respectfully refer the Examiner to the current Office Action at page 3, lines 1-2. Second, Applicants respectfully refer the Examiner to claim 20 as presented herein. Claim 20 now recites the term "synergistically", and Applicants believe that this claim and dependent claims 24-25 are now in condition for allowance. Also, Applicants note that the scope of claim 20 as presented herein was previously considered by the Examiner (see the Office Action of April 6, 2005 at page 6) and found to be allowable. Applicants also agree with the comments in the April 6 Office Action as applied to the instant rejection in that the Rucker and Hipkind '760 references (or combination thereof) fail to fairly suggest, teach or disclose treating migraines by dermally administering the components as recited in claim 20, and that unexpected results exist for the present invention. Thus, Applicants respectfully submit that this rejection has been overcome.

With regard to the rejection of claim 27, this rejection is rendered moot upon cancellation of the claim.

Thus, Applicants respectfully submit that all issues as stated in the Office Action are sufficiently addressed. Reconsideration and allowance of all pending claims are respectfully requested.

Conclusion

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present

Application No. 09/890,552

Docket No.: 0020-4883P

Art Unit 1614

After Final Office Action of September 21, 2005

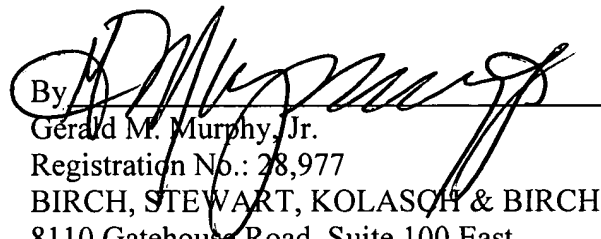
application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez (Reg. No. 48,501) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: DEC 08 2005

Respectfully submitted,

By 
Gerald M. Murphy, Jr.
Registration No.: 28,977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant